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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No._____.

LILLEY CORNETT, - - - - - *Petitioner,*

v.

SWIFT COAL & TIMBER COMPANY, ET AL., *Respondents.*

BRIEF FOR PETITIONER.

If This Honorable Court Please:

This is an application for a writ of certiorari to review a judgment of the *United States Circuit Court of Appeals* for the *Sixth Circuit* filed and entered April 9, 1940, (45)[1], which affirmed a judgment of the *District Court* for the *Eastern District* of *Kentucky* rendered June 22, 1939 (17-20).

JURISDICTION.

The jurisdiction of this *Court* is invoked under *Sec. 240 (a)* of the *Judicial Code (Act of February 13, 1925, 43 Stat. at L. 936, 28 U. S. C. A., Sec. 240 (a))*:

(a) Because the judgment of the *Sixth Circuit* ignores and refuses to apply and give effect to the

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[1]Figures in parentheses refer to pages in the transcript.

settled law of the State of Kentucky respecting the superiority of tax liens over other liens subsequently acquired.

(b) Because the judgment of the *Sixth Circuit* ignores and refuses to give effect to the settled law of Kentucky respecting the essentials of jurisdiction to determine attachment proceedings.

(c) Because by its refusal to follow and apply the laws of Kentucky in the respects mentioned the *Sixth Circuit* has deprived petitioner of property without due process of law contrary to the *Fifth Amendment* to the *Constitution* of the *United States.*

THE FACTS.

This is a contest over the ownership of a small fraction, less than 50 acres of land, in Letcher County, Kentucky (7, 26, 40). On July 1, 1930, these lands were owned by the American Column & Lumber Company, an Ohio corporation, hereinafter called "Lumber Company" (10, 25), which had purchased them to serve as a right-of-way for a railroad over which to remove timber (7, 26).

As of that date—July 1, 1930,—these lands were accountable to Kentucky and Letcher County for tax assessment for State and County taxes due in 1931. (See *Ky. Stat., Sec. 4052.* Appendix *post,* p. 24.) The learned *District Court* for the *Eastern District of Kentucky* so found (15), and the judgment of the *Sixth Circuit* (45), finds no fault with that conclusion. These lands were the only property of any sort of any

intrinsic taxable value owned by the Lumber Company in Letcher County (8, 40, and see *Cornett v. Greever, 272 Ky. 241, 113 S. W. (2d) 1127*). Taxes assessed as of July 1, 1930, were payable on or before December 31, 1931 (9).

By statute in Kentucky all taxable property is impressed with a lien as of July 1st, the date for assessment, to secure payment of the taxes due. (See *Ky. Stat., Sec. 4021,* Appendix *post,* p. 23). This lien attached as of July 1st, regardless of the actual date of assessment, and the learned *District Court* so found (15). The learned *Sixth Circuit* likewise finds no fault with that holding (45).

The Lumber Company failed to pay these taxes when due (30), and the then Sheriff of Letcher County on March 7, 1932, proceeding under *Ky. Stat., Sec. 4149* (Appendix *post,* p. 24), proceeded to advertise these lands for sale and to sell them at the front door of the Court House at the County site to satisfy the tax lien (9, 30). At that sale petitioner became the purchaser of the lands at the price of the taxes due, interest, penalties and cost (9).

At that time the Lumber Company had two years to redeem these lands by paying petitioner what he had paid plus interest (see *Ky. Stat., Sec. 4151-2,* Appendix *post,* p. 25),[2] but it made no effort to redeem (30) and the redemption period having expired on March 19, 1934, the then Sheriff of Letcher County, following

[2]Later than this tax sale the General Assembly of Kentucky extended the period of redemption to five years, but as to the sale in question this extension did not apply. *Greib v. National Bank of Kentucky's Receiver, 252 Ky. 753, 68 S. W. (2d), 21 at 24.*

the mandate of *Ky. Stat., Sec. 4159* (Appendix, *post*, p. 26), executed and delivered to petitioner a deed to these lands (30), which was immediately recorded.

The regularity of this tax sale and the title acquired by petitioner under his deed have been before the *Court of Appeals of Kentucky* in *Cornett v. Greever, 272 Ky. 241, 113 S. W. (2d) 1127*, and applying law to facts the sale was there declared regular and the title under the deed to be a fee simple title.[3]

In 1928 Swift Coal & Timber Company hereafter called "Swift" for brevity, instituted in the *District Court* for the *Eastern District of Kentucky*, suit in equity No. 543, which sought *inter alia* to recover from the Lumber Company exceeding $200,000.00 in damages for breach of certain contracts (26). On November 14, 1930, it had judgment for $11,760.50 and on December 31, 1931, judgment for $20,450.27 (29). This was the full extent of recovery.

July 22, 1930, twenty-one days after the tax lien attached, Swift procured from the Clerk of the *District Court* a general attachment against the property of the Lumber Company alleging that notwithstanding the Lumber Company was indebted to it in the sum of $249,812.43, it ought to recover at least $204,552.39, and only wanted to attach for $23,000.00 (26-28). This attachment was issued on an amended bill and affidavit on which no process ever issued (26-28). As we shall clearly show hereafter neither the amended bill nor the

[3]By the doctrine of *stare decisis* the same view must obtain wherein this sale and deed are questioned. *Carroll v. Carroll, 16 How. 275, 14 L. Ed. 936.*

affidavit authorized the granting of an attachment, and therefore the levy of the attachment created no lien and conferred on the *District Court* no jurisdiction to deal with the *res* levied on under this process.

July 23, 1930, twenty-two days after the impressment of the tax lien, the Marshal for the Eastern District of Kentucky levied this attachment against these lands (29). December 31, 1931, the *District Court* sustained the attachment (29). December 17, 1932, the *Court* entered an order vacating certain prior orders adjudging priorities which had been entered September 2, 1931 (30). This order of December 17, 1932, was the last order ever entered in suit No. 543, until May 5, 1937 (12)—a space of four years, four months, twenty-three days—when on a motion filed April 17, 1937, the *District Court* redocketed the case, resustained the attachment of Swift, and reordered a sale of these lands (12), appointing respondent Landrum its Special Master to make the sale.

June 7, 1937, petitioner instituted suit in equity No. 900 (33), in the *District Court* to restrain the execution of the order, on the grounds:

(a) That his tax lien was superior to all liens subsequently acquired.

(b) That Swift's attachment was void *ab initio.*

(c) That Swift had been guilty of such laches as created an abandonment of its attachment.

Suits 543 and 900 were consolidated (33), and tried and the learned *District Court* ruled against positions

(a) and (b) and absolved Swift as to position (c) (2-7; 17-20). The case was appealed to the *Sixth Circuit Court of Appeals* and that *Court* on April 9, 1940, on the facts stated, which are uncontradicted, refused to deliver an opinion and contented itself with the judgment appearing on page 45 of the transcript. We confidently say that the cases *Hall v. Hall, 174 Ky. 356,* and *Drane v. Graves, 261 Ky. 787,* do not support the judgment and that *Smith v. Young, 178 Ky. 376,* has no bearing on the question presented. We further say with confidence that the *Circuit Court of Appeals* could not have written an opinion in this case without reversing it.

SYNOPSIS OF ARGUMENT.

We propose to argue:

(a) That under the law of Kentucky a lien is impressed on all taxable property in a county as of July 1st of every year, to secure taxes payable the following year. That this lien is superior to all liens subsequently acquired, and paramount over all antecedent liens.

(b) That an affidavit for an attachment in Kentucky which does not conform strictly to *Ky. Civil Code, Sec. 196,* will not authorize or support an attachment, and that all proceedings *via* attachment, where the affidavit is defective, are void and create no lien.

(c) That where the law of a state is well settled by decision, if a *Federal Court* in that state refuse to give

that law effect, the result is equivalent to a deprivation of property without due process in violation of the *Fifth Amendment* to the *Constitution.*

ARGUMENT.

I.

All property taxable in Kentucky is valued and assessed for taxation as of July 1st, of each year for taxes due the following year.

(a) Ky. Stat., Sec. 4052 (Appendix, p. 24).
(b) District Court's 12th Conclusion of Law (Tr. 15).

And on all taxable property the State and county acquire a lien to secure the payment of such taxes, which attaches of July 1st, regardless of the actual date of assessment.

(a) Ky. Stat., Sec. 4021 (Appendix, p. 23).
(b) Allin v. Harrodsburg, 247 Ky. 360, 57 S. W. (2d) 45 at 49.
(c) District Court's 13th Conclusion of Law (Tr. 15).

The learned *District Court* for the *Eastern District of Kentucky* found as matter of law that all property in Kentucky was assessable for taxation as of July 1st of each year regardless of the actual date of assessment (*Conclusion of Law No. 12, Tr., p. 15*). This, of course, was a holding that an assessment made later than July 1st, retroacted so as to be operative as of July 1st. In the very nature of things that holding was sound for in taxation there must be a uniform

date of assessment, valuation and payment. This conclusion was compelled by the provisions of *Ky. Stat., Sec. 4052.* (See Appendix, p. 24, *post.*)

The *District Court* also concluded as matter of law that the State and County had a lien to secure payment of these taxes, and that this lien attached as of July 1st, the date for assessment, regardless of the actual date when the property might be assessed (*Conclusion of Law No. 13, Tr., p. 15*). This conclusion was based on the provisions of *Ky. Stat., Sec. 4021.* (See Appendix, p. 23, *post.*) In the *Circuit Court of Appeals,* respondents said nothing to the contrary, and the judgment of that Court (45) must be taken as approving that holding.[4]

All this as we have said, is admitted. It is also admitted that on July 1, 1930, the Lumber Company was the owner of these lands, and that they were the only property of any taxable value which the Lumber Company then or ever owned in Letcher County of taxable value. This latter fact has been judicially determined (*Cornett v. Greever, 272 Ky. 241, 113 S. W. (2d) 1127*).

If these things are true and the *District Court* and the *Circuit Court of Appeals* are correct in Conclusions of Law 12 and 13 (45), then the initial error of these *Courts* is apparent, since it is admitted that on July 1, 1930, there were no liens against these lands except this tax lien.

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[4]*Cf. Allin v. Harrodsburg, 247 Ky. 360, 57 S. W. (2d) 45, 49; Hicks v. Kimbrow, 225 Ky. 778, 10 S. W. (2d) 290; C. St. L. & N. O. Ry. Company v. Commonwealth, 115 Ky. 278, 72 S. W. 1119.*

II.

The tax lien is fixed by statute. It takes priority over any lien subsequently acquired. If it is extinguished by foreclosure and the property is not redeemed, all subsequent liens are extinguished.

(a) Rankin v. Scott, 12 Wheat. 177, 6 L. Ed. 592.

(b) Schmidtman v. Atlantic Phosphate, etc., Corporation, 230 Fed. 769, 145 C. C. A. 79.

(c) Hall v. Hall, 174 Ky. 356, 192 S. W. 76.

(d) Faust v. Louisville Trust Company, 192 Ky. 3, 232 S. W. 58.

(e) Drane v. Graves, 261 Ky. 787, 88 S. W. (2d) 927.

It is general law that in regard to priorities the lien which is elder prevails (*Rankin v. Scott, 12 Wheat. 177, 6 L. Ed. 592; Schmidtman v. Atlantic Phosphate, Etc., Corporation, 230 Fed. 769, 145 C. C. A. 79*). The senior lien must be given first consideration. There is no force in a contention that a tax sale is no fit place for the marshalling of liens. Under the law of Kentucky, the lien continues for a space of two years during which time the land may be redeemed from the tax sale and the lien extinguished. If at any time during that time those claiming other liens desire to redeem from the tax sale they may do so (*Ky. Stat., Sec. 4032*), and not only may they do so, but it is their duty to redeem (*Eblen v. Major, 147 Ky. 144, 143 S. W. 748*). Having both the right and duty to redeem if they sit by and allow the period of redemption to pass, their liens are extinguished and the sheriff of the county must convey the purchaser at the tax sale the

lands sold (*Ky. Stat., Sec. 4159*) and by that deed the purchaser acquires such title to the property as the taxpayer had at the date of assessment, and nothing more (*Johnson v. McIntire, 1 Bibb, 295; Bradley v. Sears, 138 Ky. 230, 127 S. W. 782; White v. McIntosh, 145 Ky. 59, 139 S. W. 1057; Rogers v. McAlister, 151 Ky. 488, 152 S. W. 571; Dowell v. Hallowell, 173 Ky. 543, 191 S. W. 315; Smith v. Young, 178 Ky. 376, 198 S. W. 1166*).[5]

Any other holding does not comport with the law of Kentucky as laid down by the Court of Appeals in the case of Hall v. Hall, 174 Ky. 356, 192 S. W. 76, cited by both the learned *District Court* and the learned *Circuit Court of Appeals* as supporting their judgments. In that case a mortgage had been executed by "A" to "B" conveying certain land. After the execution of the mortgage, the lands were assessed for taxes, the taxes were not paid and the lands were sold in satisfaction of the tax lien. In a contest between the mortgagee and the purchaser at the tax sale (who had subsequently obtained a deed to the lands) the tax sale purchaser contended that his tax title was superior to everything else, including the mortgage. The *Court* was explicit in setting out just what the question before it was. Its language in this respect was this:

> "The question presented for decision by the appeal is, Does a sheriff's deed conveying to the purchaser real estate, sold by that officer for a tax

[5]The last case cited, *Smith v. Young*, is one of the cases cited and relied on both by the District Court and the Circuit Court of Appeals. That case only holds that the purchaser takes such title as the taxpayer had.

due thereon, extinguish *a legally acquired lien in favor of a third party, created upon the property before its assessment* and existing at the time of such sale and when the deed was executed?" (Italics ours.)

The Court then determined that under the rule that the tax sale purchaser took such title as the taxpayer had at the date of the assessment, and since the taxpayer's title was encumbered at that time the purchaser also took the title encumbered; that his purchase was paramount to everything but not superior, and that he was entitled to his money back with interest, before any other claims were satisfied, or any other title vested.

Now if the mortgage in *Hall v. Hall, supra, had* been executed *after* the assessment of this property instead of *before,* it is clear that the ruling would have been that the tax lien was superior to the mortgage lien, and that there having been no redemption, the fee simple title passed by the tax deed.

To the same effect, under identical circumstances are *Faust v. Louisville Trust Company, 192 Ky. 193, 232 S. W. 58,* and *Drane v. Graves, 261 Ky. 787, 88 S. W. (2d) 927.*

The statute (*Ky. Stat., Sec. 4021*) declares that the tax lien shall attach as of the date of assessment, and by *Ky. Stat., Sec. 4052,* the date of assessment is fixed as of July 1st. In view of these statutes lands are not assessable as of any other date, nor does the lien attach at any other time. Assessments and liens are

not bodies floating in the air and settling at different times and places, but the times of their inception is immutably fixed by statute.

We think, therefore, that the learned *District Court* and *Circuit Court of Appeals* were in error when they decided that a lien which attached on July 23d was superior to one that was fixed on July 1st.

III.

An attachment issued on an affidavit which does not strictly follow the provisions of *Sec. 196, Ky. Code of Civil Practice* is void and service creates no lien.

(a) Worthington v. Cary, 1 Met. 470.

(b) Moore v. Harrod, 101 Ky. 248, 40 S. W. 675.

(c) Hart County Deposit Bank v. Hatfield, 236 Ky. 725, 33 S. W. (2d) 660.

(d) Howard v. Howard, 239 Ky. 160, 39 S. W. (2d) 245.

(e) Cornett v. Greever, 272 Ky. 241, 113 S. W. (2d) 1127.

And the laws of attachment of Kentucky have been adopted as the guide in such proceedings for the District Court for the Eastern District of that State.

(a) Rule 54, District Court for the Eastern District of Kentucky.

The attachment under which Swift claims a superior lien was issued on an amended bill and an affidavit to be found on pages 26 and 28 of the transcript. The search for this process was made under allegations in each of these papers which are identical in both.

These allegations which were designed to meet the essential requirements of the *Code* are (in part):

> "Plaintiff ought to recover a sum greatly in excess of defendant's property in this state, to-wit: the sum of *at least* $204,552.39, but that plaintiff claims the right only to an attachment for $23,000.00." (Italics ours.)

The amended bill (28), verifies its allegations on belief that they are true. The affidavit is a flat verification (27). In neither instance is the allegation good and putting them both together they are still fatally defective.

Ky. Code of Civil Practice, Sec. 196, is as follows:

> "An order of attachment shall be made by the clerk of the court in which the action is brought or pending, in any case mentioned in Section 194, subsections 1 and 2, if an affidavit of the plaintiff be filed in his office, showing—
>
> 1. The nature of the plaintiff's claim.
> 2. That it is just.
> 3. The sum which the affiant believes the plaintiff ought to recover; and
> 4. The existence of any of the grounds for an attachment mentioned in subsections 1 and 2 of Section 194; or, in the case mentioned in subsection 3 of Section 194, if it be shown by such affidavit, or by the return of the sheriff upon the order for the delivery of the property claimed, that the facts mentioned in that subdivision exist."

and in *United Collieries v. Martin, 248 Ky. 808, 60 S. W. (2d) 125, 89 A. L. R. 961,* the *Court* said:

> "The proceeding in garnishment is special and statutory, affording a harsh remedy, and one pursuing it must bring himself with the statute and follow its mandates. The steps are outlined for vesting the court with jurisdiction over the person of the garnishee and the property in his hands belonging to the principal defendant. It is generally held that these provisions are jurisdictional and unless they have been strictly complied with the Court has no authority to proceed."

and again in *Cornett v. Greever, 272 Ky. 241, 113 S. W. (2d) 1127,* the *Court* said:

> "As will appear from the cases cited, this court is unalterably committed to the rule that a strict compliance with the provisions of Section 196 of the Code is essential to the validity of the attachment or proceedings under it. The reason for the rule is that the remedy afforded the creditor is purely statutory and is harsh and extraordinary in that it dispossesses defendant of his property in advance of adjudication of his rights."

How well the *Court* has lived up to these requirements may be gathered from a consideration of the affidavit and amended bill. Taking first the amended bill (27-28), its verification is that its allegations are true as Burton believes. Its force therefore is that the affiant (who could properly verify) believed that the nature of Swift's claim was so and so, believed that it was just and believed that he believed that Swift ought

to recover at least a certain sum. Certainly this amended bill did not authorize the issual of an attachment. (See *Taylor v. Smith, 17 B. Mon. 542, Bailey v. Bendles, 7 Bush, 383, Frick v. Lantz, 199 Ky. 354, 251 S. W. 196, Coloras v. Allen Motor Company, 242 Ky. 93, 45 S. W. (2d) 809, Garnett v. Oliver, 242 Ky. 25, 45 S. W. (2d) 808, Kengreen Gas Utilities Corporation v. Crozier, 244 Ky. 440, 51 S. W. (2d) 262, Daffron v. Smock, 247 Ky. 98, 56 S. W. (2d) 712, United Collieries Company v. Martin, 248 Ky. 808, 60 S. W. (2d) 125, 89 A. L. R. 971*).

We may therefore lay aside the amended bill as giving vitality to Swift's claimed attachment.

Coming now to the affidavit it does set out the nature of Swift's claim, and that it is just, but as to Burton's belief about the amount he believes Swift ought to recover from the Lumber Company it is as follows:

> "Plaintiff ought to recover a sum greatly in excess of the value of defendant's property in this state, to-wit; the sum of *at least* $204,552.39, but that plaintiff claims the right only to an attachment for $23,000.00." (Italics ours.)

That, under the *Kentucky Code*, is not sufficient. The requirement that the attaching creditor shall reveal clearly the sum he believes he ought to recover from a defendant is simple, easily complied with, and is designed to exhibit his good faith in his claim. He might, for instance, sue for $1,000.00, when a search of his conscience would not lead to a belief that he ought

to recover that sum. The *Courts* of Kentucky have been insistent on strict compliance with that *Code* provision.

In *Worthington v. Cary, 1 Met. 470,* the *Court* said:

> *"But both the affidavits are silent as it respects the nature or justice of the plaintiff's claim, or the amount he believed he was entitled to recover in the action. This* defect in the affidavit is fatal to the validity of the attachment, and to all proceedings *under it.* The remedy is a summary one, and a party can entitle himself to it only by a strict compliance with the terms prescribed by law. In Taylor v. Smith, 17 B. Mon. 536, it was held that it was fatal that the affidavit did not state that plaintiff's claim was just." (Italics ours.)

In *Moore v. Harrod, 101 Ky. 248, 40 S. W. 675:*

> "There is, however, no attempt, beyond a statement of the grounds of attachment, to conform to the requirements of section 196, of the Code; which, in addition, requires the affidavit to show (1) the nature of the plaintiff's claim; (2) that it is just; (3) the sum which the affiant believes the plaintiff ought to recover. If, therefore, we hold that the nature of the claim is sufficiently set out, still there is no averment that the claim is just, *and no statement in terms of the sum affiant believes the plaintiff ought to recover. This court has held several times that a failure to so state is fatal and this although the petition is upon a note for a given sum which is alleged to be due and unpaid."* (Italics ours.)

In *Hart County Deposit Bank v. Hatfield, 236 Ky. 725, 33 S. W. (2d) 660:*

> "It is the rule that the omission of the affidavit for an attachment to state that the claim is just is fatal to the lien. Frick & Lindsay v. Lantz & Ogden, 199 Ky. 354, 251 S. W. 196. *The same rule necessarily applies when the affidavit omits to state the sum which the affiant believes the plaintiff ought to recover.* * * * It is apparent therefore that the defective affidavit did not furnish the basis for a valid attachment lien." (Italics ours.)

In *Howard v. Howard, 239 Ky. 160, 39 S. W. (2d) 245:*

> "Error 2, *supra,* was before us for determination in the very recent case of Hart County Deposit Bank v. Hatfield, 236 Ky. 725, 33 S. W. (2d) 660, 662, and in which we held that the failure of the affidavit for the attachment to state 'the sum which the affiant believes the plaintiff ought to recover,' as contained in subsection 3 of section 196 of the Civil Code of Practice, was fatal to the attachment and gave to the plaintiff no lien on any property that might be levied on thereunder."

In *Cornett v. Greever, 272 Ky. 241, 113 S. W. (2d) 1127,* the affidavit for the attachment contained this after setting out the amount of claim:

> "There are no set-offs or counterclaims in favor of the defendant against the same."

And the Court said:

> "Looking to the grounds for attachment above set out, it will be found that there is no statement

in words or in terms 'the sums which the affiant believes he ought to recover'; therefore, in harmony with the established rule from which we see no reason to recede, we are constrained to hold that the affidavits for attachments were fatally defective and therefore the attachments and subsequent proceedings under them were void."

Notwithstanding this plain statutory requirement, and the decisions of the Court of Appeals of Kentucky commanding a strict compliance, and the fact that they are bound by these decisions (*Loewe v. Savings Bank of Danbury, 226 Fed. 444, 149 C. C. A. 496, 242 U. S. 357, 37 Sup. Ct. Rep. 172, 61 L. Ed. 360; Gumble v. Pitkin, 124 U. S. 131, 8 Sup. Ct. Rep. 379, 31 L. Ed. 374; Flietas v. Cochrem, 101 U. S. 301, 25 L. Ed. 954; People's Savings Bank v. Batchelder Egg, etc., Company, 51 Fed. 130, 2 C. C. A. 126; Rice v. Adler Goldman Commission Company, 71 Fed. 151, 18 C. C. A. 15*), the learned District Court and the *Circuit Court of Appeals* have ignored them and decided that an affidavit which wobbled around between decision and indecision supported an attachment, and conferred jurisdiction to deal with the *res*. That affidavit in no sense accorded with the Code requirement. The Code did not require that the affidavit state at least the amount which the affiant believed he ought to recover, but the amount itself.

We think, therefore, the learned Circuit Court of Appeals was in error.

IV.

The case of Cornett v. Greever, 272 Ky. 241, 113 S. W. (2d) 1127.

That case was a contest between petitioner and three law firms over the title of petitioner to this land under his sheriff's tax deed. Two questions were presented and decided. (a) The validity of petitioner's tax deed. (b) The validity of attachments issued to the three law firms July 22, 1930, and levied on this land July 23, 1930. The *Court of Appeals of Kentucky* decided (a) that petitioner's tax deed was perfectly valid and passed the fee simple title, and (b) that the attachment of the three law firms were void *ab initio* because they had not complied strictly with *sec. 196* of the *Kentucky Code of Civil Practice.*

While this case may not be *res adjudicata,* it is certainly *stare decisis,* and entitled to recognition under that doctrine. The question argued in Sections I and II of this brief *ante* was not before the Court apparently, or if it was, the Court found it unnecessary to decide it.

V.

Where a Federal Court sitting in a State refuses to apply the law of the State, its action amounts to a deprivation of property without due process of law.

The law of each state in the Union is the fundamental law of the land so far as that state is concerned, and the *Federal Courts* sitting in that state are bound to follow and apply its laws (*Erie Railroad Company v.*

Tompkins, 304 U. S. 64, 58 Sup. Ct. Rep. 817, —— *L. Ed.* ——). If they fail to do so they have failed to accord the losing litigant due process of law in violation of the *Fifth Amendment* (*Fallbrook Irrigation District v. Bradley, 164 U. S. 112, 17 Sup. Ct. Rep. 56, 41 L. Ed. 369*).

That is what has happened in this case. The laws of Kentucky are plain as to dates of assessment and liens, and as to jurisdictional validity of attachments. If they be not followed, then we have not been accorded due process of law by the *Federal courts* sitting in and for Kentucky.

CONCLUSION.

We respectfully ask a certiorari, and a reversal.

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Pineville, Ky.,
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